IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 13103 of 2006(I)

PETITIONER:

M.P.ABDUL RAZAK,(RAZAK FROOQUE),
S/O.M.P.MOHAMMED, AGED 46 YEARS, FAROOK MANZIL,
KODUVALLY AMSOM, AND DESOM, KOZHIKODE DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

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1. M/S.SOUTHERN INDIA TRADING CORPORATION
201, HIMALAYA HOUSE, 2ND FLOOR, PALION ROAD,
MUMBAI, REPRESENTED BY ITS PARTNER,
PRAVIN GOVERDHAN BHAI.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSCUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.P.DANDAPANI
GOVERNMENT PLEADER SRI.K.A.AKBAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:TRUE COPY OF THE COMPLAINT IN S.W.312/04 ON THE FILE OF THE 38TH METROPOLITAN MAGISTRATE COURT.

EXT.P2:TRUE COPY OF THE SUMMONS IN S.W.534/05.

/TRUE COPY/

R.BASANT, J.

W.P.C.NO.13103 OF 2006

Dated this the 14th day of December, 2006.

JUDGMENT

The petitioner has come to this Court with this Writ Petition under Article 226 of the Constitution of India to quash the criminal prosecution initiated against him before the 38th Metropolitan Magistrate Court at Ballard Pier, Mumbai. The 1st respondent is the complainant. The allegations raised is that the petitioner is guilty of the offence punishable under Sections 120 B and 420 I.P.C.

2. The learned counsel for the respondent has raised an objection that this Court lacks jurisdiction to quash the proceedings pending before the Magistrate Court at Mumbai in the light of the decision in **Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd.** [2006 (2) KLT 525 (SC)]. He particularly relies on the following passage in para.28, which clearly lays down that ordinarily only such High Court, within whose jurisdiction the subordinate court which passed the order is situated, alone would have jurisdiction to entertain the application.

> "We have referred to the scope of jurisdiction under Arts.226 and 227 of the Constitution only to highlight that the High Courts should not ordinarily interfere with an order taking cognizance passed by a competent court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of subordinate court has been passed, would have the jurisdiction to entertain an application under Art.227 of the Constitution of India unless it is established that the earlier cause of action arose within the jurisdiction thereof."

3. I find no circumstances available in this case, which would justify this Court invoking the powers under Article 226/227 of the Constitution or Section 482 Cr.P.C to interfere with the order passed by the Magistrate at Mumbai to take cognizance of the offence allegedly committed by the petitioner. The mere facts that the alleged goods were supplied within the jurisdiction of this Court or that the amount allegedly due was demanded within this State are not sufficient to justify the invocation of the powers under Article 226/227 of the Constitution by this Court in respect of the cognizance taken by the court at Mumbai.

4. This Writ Petition is, in these circumstances, dismissed.

R.BASANT
JUDGE

rtr/